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c 23 The Retail Sales Tax Amendment Act, 1976 (No. 1)

Ontario

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CHAPTER 23

An Act to amend The Retail Sales Tax Act

Assented to April 14th, 1976

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

- 1.—(1) Paragraph 4 of section 1 of *The Retail Sales Tax Act*, ^{s. 1, par. 4, amended} being chapter 415 of the Revised Statutes of Ontario, 1970, is amended by adding at the end thereof “except that, in the case of either a mobile home or a modular home sold for the first time at a retail sale after the 6th day of April, 1976, ‘fair value’ means the taxable value of such mobile home or modular home, as the case may be”.
- (2) The said section 1, as amended by the Statutes of ^{s. 1, amended} Ontario, 1973, chapter 23, section 1 and 1975, chapter 9, section 1, is further amended by adding thereto the following paragraphs:
- 5a. “mobile home” means a vehicular portable structure that,
- (a) is defined to be a mobile home, a multiple section mobile home or a swing out and expandable room section mobile home for the purposes of the Z240 series of standards prescribed by the Canadian Standards Association; and
- (b) complies with the requirements for a mobile home, multiple section mobile home or swing out and expandable room section mobile home contained in that series of standards, and bears the seal of the Canadian Standards Association attesting to such compliance;
- 5b. “modular home” means a house that is intended for residential purposes and that is constructed

by assembling manufactured modular units each of which comprises at least one room or living area, has been manufactured to comply with the A277 series of standards prescribed by the Canadian Standards Association, and bears the seal of that Association attesting to such compliance.

s. 1,
amended

- (3) The said section 1 is further amended by adding thereto the following paragraph:

8a. "production property" means machinery, equipment or structures operated or used to manufacture, produce or modify tangible personal property, but does not include,

(a) land;

(b) buildings intended to protect, house or shelter such machinery, equipment or structures, and property in, or connected to, such buildings that are primarily used to provide lighting, heating, air-conditioning or other services or functions for people within the buildings or for the protection or maintenance of such machinery, equipment or structures in the buildings;

(c) smoke-stacks or chimneys; or

(d) any machinery, equipment or structure, or class thereof, prescribed by the Minister not to be production property.

s. 1, par. 9,
re-enacted

- (4) Paragraph 9 of the said section 1, as amended by the Statutes of Ontario, 1973, chapter 23, section 1, is repealed and the following substituted therefor:

9. "purchaser" means a consumer or person who acquires tangible personal property anywhere, or who acquires or receives a taxable service at a sale in Ontario, for his own consumption or use, or for the consumption or use in Ontario of other persons at his expense, or on behalf of or as agent for a principal who desires to acquire such property or service for consumption or use in Ontario by such principal or other persons at his expense, and includes a person who, at his expense, purchases admission to a place of amusement for himself or for another person or who at his expense acquires production property at a sale described in clause *fa* of paragraph 13.

- (5) Paragraph 13 of the said section 1, as amended by the Statutes of Ontario, 1975, chapter 9, section 1, is further amended by adding thereto the following clause: <sup>s. 1,
par. 13,
amended</sup>

(fa) the incorporation of production property into real property, the affixation of production property in, on, or to real property so that the production property is thereafter real property, or the fabrication or construction as real property of any production property, when such incorporation, affixation, or fabrication or construction is for a consideration comprising the cost or fair value of such production property.

- (6) Paragraph 15 of the said section 1, as re-enacted by the Statutes of Ontario, 1975, chapter 9, section 1, is repealed and the following substituted therefor: <sup>s. 1,
par. 15,
re-enacted</sup>

15. "tangible personal property" means,

- (a) personal property that can be seen, weighed, measured, felt or touched, or that is in any way perceptible to the senses,
- (b) natural gas or manufactured gas,
- (c) any chattel that is a fixture and for the use, possession or enjoyment of which a consideration is paid that is not included in the fee, charge, rent or price paid for the possession or occupation of the real property to which the chattel is affixed or for the purchase of such real property, or
- (d) production property in Ontario that is not personal property.

- (7) The said section 1 is further amended by adding thereto the following paragraph: <sup>s. 1,
amended</sup>

17a. "taxable value" means,

- (a) in the case of a mobile home, one-half of the sale price thereof that is charged to the person acquiring the mobile home as a residence, if such price is determined by including therein all charges for delivery of the mobile home in accordance with the terms of such sale, by excluding therefrom the

retail sale price of any furniture or appliance that is not permanently attached to, and part of, the interior structure of the mobile home, and by excluding therefrom any charges for the installation or connection of the mobile home on the site to which it is delivered; or

- (b) in the case of a modular home, an amount equal to 55 per cent of the sale price of such modular home on the sale thereof by its manufacturer to a builder, or where the manufacturer is the consumer of such modular home, 55 per cent of the sale price normally charged by the manufacturer on the sale thereof to a builder,

but such taxable value applies only with respect to the first retail sale of a mobile home or a modular home after the 6th day of April, 1976.

s. 2 (2),
par. 2,
re-enacted

- 2.—(1) Paragraph 2 of subsection 2 of section 2 of the said Act, as amended by the Statutes of Ontario, 1973, chapter 23, section 2, is repealed and the following substituted therefor:

2. prepared meals sold at a price of over \$5.00.

s. 2,
amended

- (2) The said section 2, as amended by the Statutes of Ontario, 1973, chapter 23, section 2, 1974, chapter 7, section 1 and 1975, chapter 9, section 2, is further amended by adding thereto the following subsections:

Refund
by
vendor

(8c) Notwithstanding subsection 8, a vendor may, in the circumstances described in clauses *a* to *d*, refund to a purchaser from whom he has collected tax, the whole or a part of such tax, as the case requires, if the refund is made within two years following the sale with respect to which the tax being refunded was collected, and if,

- (a) the tax payable and collected, or the purchase price charged, has been overstated by reason of a clerical or arithmetical error in computation;
- (b) the purchaser acquired from the vendor the goods for the tax on which a refund is sought for the purpose of reselling such goods, and after the sale and before the refund is made provides the vendor with a proper purchase exemption certificate with respect to the goods;

(c) the purchase price agreed to at the time of the sale is subsequently reduced,

(i) by reason of the purchaser's return of all or part of the goods purchased and the vendor's agreeing to refund part or all of the purchase price therefor,

(ii) by reason of damage to the goods in the course of delivery, the discovery of a defect in the quality of the goods sold, or the failure of the goods to answer fully the purpose for which they were purchased, provided that, in any such case, the goods are retained in full by the purchaser, or

(iii) by reason of any discount for prompt payment agreed to at the time of sale;

or

(d) the refund made is with respect to a class of transactions prescribed by the Minister for the purpose of this subsection or has been authorized by the Minister in writing prior to the making of the refund,

and any refund made under this subsection may be deducted by the vendor making it from subsequent remittances of tax under this Act.

(8d) Where the erroneous payment giving rise to a claim for a refund under subsection 8 or 8a is the result of a sale under a contract in which a party other than the applicant for the refund is the purchaser who should have paid the tax or any part thereof a refund of which is sought, and where such tax, had it been properly paid, can reasonably be considered to have been likely to form a part of the contract price that would have been charged to the person claiming the refund, the Minister may, notwithstanding subsection 8 or 8a, determine by such method or formula as he considers appropriate the amount by which the payment sought to be refunded exceeds the tax that would have been properly payable in the performance of the contract, and shall refund only the amount of such excess so determined. Refund not
to include
tax

(3) Subsection 9 of the said section 2 is amended by adding at the end thereof "at the time such tangible personal property is brought into Ontario or delivery thereof is received in Ontario". s. 2 (9),
amended

s. 5 (1),
par. 2,
amended

3. —(1) Paragraph 2 of subsection 1 of section 5 of the said Act, as re-enacted by the Statutes of Ontario, 1973, chapter 23, section 4, is amended by striking out "\$4.00" in the second line and in the fourth line and inserting in lieu thereof in each instance "\$5.00".

s. 5 (1),
par. 2a,
amended

- (2) Paragraph 2a of subsection 1 of the said section 5, as enacted by the Statutes of Ontario 1973, chapter 23, section 4, is amended by striking out "\$4.00" in the sixth line and inserting in lieu thereof "\$5.00".

s. 5 (1),
pars. 23, 24,
re-enacted

- (3) Paragraphs 23 and 24 of subsection 1 of the said section 5 are repealed and the following substituted therefor:

23. aircraft, and parts, equipment or repairs for such aircraft, that meet such requirements as are prescribed by the Minister and that are used by a person approved as a carrier of goods or passengers under the *Aeronautics Act* (Canada), or regulations made thereunder, to provide such class or classes of air services as are prescribed by the Minister;

24. street flushers, street sweepers and fire-fighting vehicles, as defined by the Minister, and purchased for the exclusive use of a municipality, university or public hospital at a price of more than \$1,000 per vehicle;

24a. a mobile home within the meaning of this Act that has been occupied as a residential dwelling and that has previously been sold at a retail sale in Ontario made in good faith and for valuable consideration;

24b. thermal insulation materials, as defined by the Minister, that are purchased exclusively to insulate a building the construction of which has been completed and that is occupied permanently or seasonally for residential purposes if, with respect to such purchase, the person selling such materials is provided with either,

(a) the completed exemption certificate for thermal insulation materials in the form prescribed by the Minister, and signed by the purchaser; or

(b) where the person acquiring such materials holds a valid permit under section 3, a single purchase exemption certificate or a blanket purchase exemption certificate issued in accordance with the regulations,

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c. A-3

but the exemption conferred by this paragraph does not apply to the purchase of such materials used to insulate any commercial or industrial building, any hotel, motel or lodge or similar establishment, or any new residential premises in the process of construction.

- (4) Clause *d* of paragraph 49 of subsection 1 of the said section 5, as enacted by the Statutes of Ontario, 1975, chapter 9, section 4, is repealed. s. 5 (1),
par. 49 (d),
repealed

- (5) Paragraph 51 of subsection 1 of the said section 5 is repealed and the following substituted therefor: s. 5 (1),
par. 51,
re-enacted

51. uncanceled postage stamps and uncanceled revenue stamps valid for the transportation of mail or for revenue purposes in the jurisdiction issuing such stamps, if the consideration for the sale thereof does not exceed the equivalent face value thereof in Canadian funds.

- (6) Paragraph 64 of subsection 1 of the said section 5 is amended by striking out "(Canada)," in the second line and inserting in lieu thereof "(Canada) or by the Minister,". s. 5 (1),
par. 64,
amended

- (7) Paragraph 65 of subsection 1 of the said section 5 is amended by striking out "(Canada)," in the second line and inserting in lieu thereof "(Canada) or by the Minister,". s. 5 (1),
par. 65,
amended

- (8) Subsection 1 of the said section 5, as amended by the Statutes of Ontario, 1972, chapter 21, section 1, 1973, chapter 23, section 4, 1974, chapter 7, section 2 and 1975, chapter 9, section 4, is further amended by adding thereto the following paragraph: s. 5 (1),
amended

67. the consumption of tangible personal property occurring only as part of a transaction that is a sale described in clause *fa* of paragraph 13 of section 1, and when the consumer is a person other than the purchaser of production property at such sale and such tangible personal property becomes, or becomes part of, production property, but not otherwise.

4. Section 10 of the said Act is repealed and the following substituted therefor: s. 10,
re-enacted

10. All taxes collected by a vendor under this Act, and all amounts collected as or on account of tax by a vendor under this Act, shall, subject to subsection 8c of section 2, be remitted to the Treasurer at the time or times and in Accounting
by vendors

such manner as are prescribed by the regulations, and every vendor who fails so to remit the tax or amounts so collected by him is guilty of an offence and, in addition to any penalty otherwise provided by this Act, is liable on summary conviction to a fine of not less than \$25 and not more than \$1,000 plus, in an appropriate case, an amount of not more than double the amount of tax collected and amounts collected as or on account of tax under this Act that were not remitted to the Treasurer as required by this Act or the regulations.

s. 15 (3),
amended

5. Subsection 3 of section 15 of the said Act, as re-enacted by the Statutes of Ontario, 1975, chapter 9, section 6, is amended by striking out "any tax collectable by a vendor or" in the first and second lines, by striking out "collectable or" in the third and fourth lines and by striking out "vendor or" in the fifth line.

s. 15a,
enacted

6. The said Act is amended by adding thereto the following section:

Erroneous
refunds or
rebates

15a.—(1) The Minister may assess pursuant to this section any person who has received a refund or rebate under this Act or the regulations and who is not entitled to such refund or rebate, and such assessment shall be for the amount of the refund or rebate to which the person is not entitled and shall be accompanied by a brief statement in writing of the grounds upon which the person assessed is claimed not to be entitled to the amount claimed in the assessment.

Disallowance
of rebate
or refund

(2) Where a person has, in accordance with this Act and the regulations, applied for a refund or rebate under this Act or the regulations, and his claim is in whole or in part refused, the Minister shall cause to be served on such person a statement of disallowance in such form as the Minister shall prescribe, and the statement shall specify the amount of the disallowance and the reasons therefor.

Penalty for
non-
collection
of tax

(3) Every vendor who has failed to collect tax that he is responsible to collect under this Act or the regulations and who has not complied with section 17 with respect to his failure to collect such tax shall, when assessed therefor, pay a penalty equal to the amount of tax that he failed to collect, but where the tax that should have been collected from a particular purchaser is \$50 or more and the vendor supplies to the Minister particulars of the transaction giving rise to such amount of tax and the name and address in Ontario of the purchaser liable for the tax, the Minister may, unless he is satisfied that the vendor wilfully neglected to

collect such tax from such purchaser, assess such purchaser for such tax, in which case such tax shall not be included in an assessment made pursuant to this subsection.

(4) No penalty imposed pursuant to subsection 3 shall be ^{Idem} imposed with respect to tax that should have been collected more than three years immediately preceding the day of the assessment under subsection 3, except that, where the Minister establishes that any vendor has made any misrepresentation that is attributable to neglect, carelessness or wilful default, or has committed any fraud, in making a return or in supplying any information under this Act or the regulations or in omitting to disclose any information, then the Minister may, where he considers it expedient, impose the penalty provided for in subsection 3 for tax that should have been collected more than three years prior to the date of the assessment under subsection 3.

(5) Every purchaser who, at a sale in Ontario, acquires or purchases from a person who is not a vendor within the meaning of this Act tangible personal property for the consumption of which the purchaser is liable to pay tax under this Act and who understates the fair value of such tangible personal property in any written statement or document signed by him or under his authority shall, when assessed therefor, pay a penalty of, ^{Penalty for understating fair value}

(a) not less than an amount equal to the greater of,

(i) \$25, or

(ii) the unpaid tax applicable to the amount by which he understated the fair value of such tangible personal property;

and

(b) not more than \$500,

and such penalty shall be in addition to the tax properly payable by him on his consumption of such tangible personal property.

(6) A statement under subsection 2 or a notice of an ^{Notice of assessment} assessment made under this section may be served by sending such statement or notice by prepaid mail to the person whose claim is refused or against whom an assessment is made under this section, as the case may be, at his last known address in Ontario, or by serving such notice on him personally.

Assessment
conclusive

(7) Subject to being vacated on an objection or appeal, a statement or assessment under this section shall be deemed to be valid and binding, and the amount assessed in any such assessment shall, for the purposes of the collection or recovery thereof, be deemed to be tax owing under this Act and to be conclusively established as a debt owing to Her Majesty in right of Ontario.

Payment of
assessment

(8) Every person assessed under this section shall, within thirty days of the service of the notice of assessment, pay the amount assessed against him whether or not an objection to or appeal from the assessment is outstanding.

s. 18a,
amended

7. Section 18a of the said Act, as enacted by the Statutes of Ontario, 1975, chapter 9, section 8, is amended by adding thereto the following subsection:

Discharge
of
lien

(2) Where, on or after the 8th day of April, 1975, a person acquires in good faith, for value and without notice the title to any personal property on or with respect to which, prior to the 8th day of April, 1975 a first lien and charge arose or came into existence by virtue of subsection 2 of section 18 as it existed immediately prior to that date, such personal property is, upon the 8th day of April, 1976 absolutely discharged from such first lien and charge then remaining in force.

s. 19 (1),
re-enacted

8. (1) Subsection 1 of section 19 of the said Act, as amended by the Statutes of Ontario, 1972, chapter 21, section 3, is repealed and the following substituted therefor:

Notice
of
objection

(1) Where a person objects to an assessment made against him under section 15 or 15a or to a statement under section 15a that is served on him, he may, within sixty days from the day of mailing of the statement or notice of assessment serve on the Minister a notice of objection in duplicate in the prescribed form setting out the reasons for the objection and all relevant facts.

s. 19 (3),
re-enacted

- (2) Subsection 3 of the said section 19 is repealed and the following substituted therefor:

Reconsid-
eration

(3) Upon receipt of the notice of objection, the Minister shall with all due dispatch reconsider the assessment or statement objected to and vacate, confirm or vary the assessment or statement, or reassess or serve a fresh statement, and he shall thereupon notify the person making the objection of his action by registered letter.

s. 20 (1),
re-enacted

9. Subsection 1 of section 20 of the said Act is repealed and the following substituted therefor:

(1) When the Minister has given the notification required ^{Appeal} by subsection 3 of section 19, the person who has served a notice of objection under that section may appeal to the Supreme Court to have the assessment or statement so objected to vacated or varied, but no appeal under this section shall be instituted after the expiration of ninety days from the day notice has been mailed to such person under subsection 3 of section 19, and such appeal shall not be instituted in the Divisional Court.

10. Subsection 1 of section 22 of the said Act, as amended by ^{s. 22 (1),} the Statutes of Ontario, 1975, chapter 9, section 9, is further ^{amended} amended by striking out "and, unless the Court otherwise orders, ready for hearing" in the fifth and sixth lines.

11. Section 38 of the said Act is amended by adding thereto the ^{s. 38,} following subsection: ^{amended}

(8) Where a fine provided for in this Act is imposed on any person as the result of his conviction for the commission of an offence against this Act, a sentence of imprisonment for not more than one year in default of payment of the ^{Default} fine may also be imposed on such person. ^{in paying}

12. Subsection 3 of section 42 of the said Act, as enacted by the ^{s. 42 (3),} Statutes of Ontario, 1975, chapter 9, section 11, is amended ^{amended} by adding thereto the following clauses:

- (d) providing for the rebate of all or part of the tax paid on the purchase of a motor vehicle that is or will be adapted for the transportation of persons who have a permanent physical handicap that renders it impractical for them to use the usual forms of public transportation, if available, provided that such purchasers do not operate or permit the use of such vehicles for profit or as part of any undertaking carried on for gain, and the Minister may determine the conditions on which such rebate may be made and the extent of the adaptation necessary to entitle any person to such rebate;
- (e) determining the basis and method for payment, collection, or accounting for tax on the consumption or use of tangible personal property or a taxable service where such use or consumption frequently or substantially occurs outside Ontario or is alternately or concurrently taxable and exempt;
- (f) providing for the refund of tax paid on the purchase of thermal insulation materials, as defined for

the purposes of paragraph 24*b* of subsection 1 of section 5, used after the 6th day of April, 1976 to insulate a building the construction of which has been completed, that is occupied permanently or seasonally for residential purposes, and that is not a building to which the exemption conferred by paragraph 24*b* of subsection 1 of section 5 does not apply.

Commence-
ment

13. -(1) This Act, except subsections 3, 4, 5 and 6 of section 1, subsection 2 of section 2 and subsection 8 of section 3, shall be deemed to have come into force on the 7th day of April, 1976.

Idem

(2) Subsection 2 of section 2 shall be deemed to have come into force on the 8th day of April, 1975.

Idem

(3) Subsections 3, 4, 5 and 6 of section 1 and subsection 8 of section 3 come into force on the 1st day of January, 1977.

Short title

14. This Act may be cited as *The Retail Sales Tax Amendment Act, 1976*.